



38 CFR Part 38

RIN 2900-AR80

Persons Eligible for Burial

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to revise its regulations regarding persons eligible for interment in a national cemetery, documentation associated with requests for interment, and eligibility for headstones or markers to implement new authorities provided in the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY22). Section 6601 of NDAA FY22 expanded eligibility for interment in national cemeteries to include certain individuals who served with a special guerrilla unit or irregular forces operating from a base in Laos in support of the Armed Forces during a specified time period. VA proposes to amend its regulations to reflect this expanded eligibility.

DATES: Comments must be received by VA on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Comments must be submitted through www.regulations.gov. Except as provided below, comments received before the close of the comment period will be available at www.regulations.gov for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: <https://www.regulations.gov>. VA will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages individuals not to submit

duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking.

FOR FURTHER INFORMATION CONTACT: Michelle Myers, Management and Program Analyst, Legislative and Regulatory Service, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC, 20420. Telephone: (202) 717-2979. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

Background

The National Cemetery Administration (NCA) honors Veterans and their eligible family members with final resting places in national shrines and with lasting tributes that commemorate their service and sacrifice to our Nation. VA operates 155 national cemeteries and 34 soldiers' lots and monument sites in 42 states and Puerto Rico. More than 4 million Americans, including Veterans of every war and conflict, are buried in VA's national cemeteries. Section 2402 of title 38, United States Code (U.S.C.), specifies in law persons who are eligible for interment in national cemeteries under NCA control.

On March 23, 2018, the Consolidated Appropriations Act, 2018, Pub. L. 115-141, div. J, tit. II, section 251 (CAA), amended 38 U.S.C. 2402(a) to establish eligibility for burial in a VA national cemetery for certain individuals naturalized pursuant to section 2(1) of the Hmong Veterans' Naturalization Act of 2000, Pub. L. 106-207 (2000 Act). Section 2(1) of the 2000 Act specified that an individual who served with a special guerilla unit or irregular forces, operating from a base in Laos in support of the United States (U.S.) military during a specified period was temporarily eligible for an exemption from the English language requirement for naturalization. *See also id.* at section 6.

Individuals who were granted naturalization under this authority, who died on or after March 23, 2018, and resided in the U.S. at the time of death are eligible for burial in a national cemetery pursuant to the CAA. In 2021, VA implemented this authority by amending its regulations to reflect the expanded eligibility for interment in a national cemetery. 86 FR 43091.

New Authority

On December 27, 2021, the National Defense Authorization Act for Fiscal Year 2022, Pub. L. 117-81, section 6601 (NDAA FY22), further amended 38 U.S.C. 2402(a) to expand eligibility for interment in NCA national cemeteries to additional individuals who served honorably with a special guerrilla unit or irregular forces operating from a base in Laos in support of the Armed Forces at any time during the period beginning on February 28, 1961, and ending on May 7, 1975. Those individuals must be, at the time of death, residing in the U.S. and either a U.S. citizen or an alien lawfully admitted for permanent residence in the U.S.

This change provides burial eligibility to affected individuals who were not eligible under the CAA because they may have become U.S. citizens prior to the 2000 Act or were naturalized after the English language exemption provision of the 2000 Act expired. This change also expands eligibility to individuals who were lawfully admitted for permanent residency but are not naturalized U.S. citizens.

To implement this new authority, VA proposes to revise § 38.620(j) to include this new category of individuals. Paragraphs (j)(1) and (2) would address the date of death and residency requirements; paragraph (j)(3)(i) would address those individuals covered by the CAA, and paragraph (j)(3)(ii) would address those covered by the NDAA FY22.

Additionally, VA proposes to revise § 38.619(a) by inserting a new paragraph (a)(2) to provide more specific information regarding documentation supporting

interment requests for persons eligible for interment in a national cemetery under 38 CFR 38.620(j). Under § 38.619(a)(1), VA requires certain information from a decedent's personal representative at the time of the request for interment to determine eligibility and ascertain other details to allow for scheduling the interment. Proposed new paragraph (a)(2)(i)(A) would require, for decedents who were naturalized under the English language exemption provided in section 2(1) of the 2000 Act, a copy of the official U.S. Certificate of Naturalization. VA would then obtain verification from the U.S. Citizenship and Immigration Services that naturalization was pursuant to section 2(1) of the 2000 Act. Neither this requirement nor the process is new, but the paragraph would codify in regulation the policy and process VA has been using to verify eligibility for this category of individuals since eligibility was first established on March 23, 2018.

Proposed new paragraph (a)(2)(i)(B) would address documentation requirements for decedents who served honorably with a special guerilla unit or irregular forces operating from a base in Laos in support of the Armed Forces at any time between February 28, 1961, and May 7, 1975, and are U.S. citizens, but were not naturalized under section 2(1) of the 2000 Act. VA would verify citizenship and review evidence of service in order to confirm eligibility.

Proposed new paragraph (a)(2)(i)(C) would address documentation requirements for decedents who served honorably with a special guerilla unit or irregular forces operating from a base in Laos in support of the Armed Forces at any time between February 28, 1961, and May 7, 1975, and were not U.S. citizens but were lawfully admitted for permanent residence in the U.S. VA would verify permanent residence status and review evidence of service.

Proposed new paragraph (a)(2)(i)(D) would require that all interment requests pursuant to § 38.620(j) include evidentiary support substantiating that the decedent resided in the U.S. at the time of death.

Proposed new paragraph (a)(2)(ii) would describe the type of documentation VA will accept as evidence of service. This type of documentation is consistent with the type of documentation used by U.S. Citizenship and Immigration Services to determine eligibility for citizenship under section 2(1) of the 2000 Act. See Pub. L. 106-207, section 4.

Proposed new paragraph (a)(2)(iii) would provide clarification that Department of Defense (DD) Form 214, Certificate of Release or Discharge from Active Duty, is not an appropriate document of service for purposes of paragraphs (a)(2)(i)(B) or (C) of this section.

Finally, VA proposes to revise § 38.630(a)(1)(ii)(F) and 38.630(a)(2)(i)(F), which address eligibility for burial headstones and markers for unmarked graves and marked graves. Because the individuals described in § 38.620(j) are by law eligible for burial in a national cemetery, they are also eligible for a government furnished headstone or marker under 38 U.S.C. 2306(a)(1) and (2) and (d)(1). VA's regulation governing eligibility for headstones and markers must be updated to include this group of individuals who are newly eligible. These revisions will ensure that VA regulations related to burial and headstone eligibility are updated for consistency with NDAA FY22.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and

Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866.

The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601-612). The factual basis for this certification is based on the fact that the proposed rule would simply describe a new category of persons eligible for interment in national cemeteries and the associated documentation to substantiate eligibility. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This proposed rule includes provisions constituting a revised collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) that require approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review and approval.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. If OMB does not approve the collection of information as requested, VA will immediately remove the provisions containing the collection of information or take such other action as is directed by OMB.

Comments on the revised collection of information contained in this rulemaking should be submitted through www.regulations.gov. Comments should indicate that they are submitted in response to “RIN 2900-AR80, Persons Eligible for Burial” and should be sent within 60 days of publication of this rulemaking. The collection of information associated with this rulemaking can be viewed at: www.reginfo.gov/public/do/PRAMain.

OMB is required to make a decision concerning the collection of information contained in this rulemaking between 30 and 60 days after publication of this rulemaking in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the provisions of this rulemaking.

The Department considers comments by the public on a revised collection of information in-

- Evaluating whether the revised collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department’s estimate of the burden of the revised collection of information, including the validity of the methodology and assumptions used;

- Enhancing the quality, usefulness, and clarity of the information to be collected; and

- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The collection of information associated with this rulemaking contained in 38 CFR 38.619 is described immediately following this paragraph, under its respective title.

Title: Verification of Eligibility for Burial in a National Cemetery, VA Form 40-4962.

OMB Control No: 2900-0232

CFR Provision: 38 CFR 38.619(a)(2)

- Summary of collection of information: Proposed 38 CFR 38.619(a)(2) would require the submission of specific documents to support the interment eligibility of persons who were naturalized under section 2(1) of the Hmong Veterans Naturalization Act of 2000 or served with a special guerilla unit or irregular forces operating from a base in Laos in support of the Armed Forces at any time between February 28, 1961, and May 7, 1975, such as a copy of the U.S. Certificate of Naturalization or a copy of the official documentation of status as a lawful permanent resident; evidence that the decedent resided in the U.S. at the time of death; and (in some circumstances) evidence of service. VA typically uses the DD214 to verify service in the U.S. Armed Forces; however, since these individuals did not serve in the U.S. Armed Forces, there is no official U.S. Government documentation of military service. Thus, in enumerated circumstances, one of the following types of evidence of service would be required:

- Original documentation issued by a government agency officially documenting the service type, location and dates served;
 - An affidavit of the decedent's superior officer attesting to the type of service, location, and dates served;
 - Two affidavits from other individuals who were also serving with such a special guerilla unit or irregular forces and who personally knew of the decedent's service; or
 - Other appropriate evidence that factually documents the service, location and dates served.
- *Description of need for information and proposed use of information:* The information will be used by NCA to determine whether the decedent meets the statutory requirements for eligibility for burial in a national cemetery, which would be enumerated at proposed 38 CFR 38.620(j).
- *Description of likely respondents:* Respondents will be personal representatives of decedents who seek burial in a national cemetery. With respect to this rulemaking, this may be family members of the decedent, funeral directors, or other designated representatives.
- *Estimated number of respondents:* VA estimates an average of 85 such respondents per year providing the information requested in the revised collection.
- *Estimated frequency of responses:* This is one time per personal representative of decedent.
- *Estimated average burden per response:* 15 minutes per response.

- *Estimated total annual reporting and recordkeeping burden:* VA estimates the total annual reporting and recordkeeping burden to be 21.25 burden hours (85 respondents × 15 minutes ÷ 60 minutes).
- *Estimated cost to respondents per year:* VA estimates the annual cost to respondents to be \$595.21. Using VA's average annual number of 85 respondents, VA estimates the respondents' total information collection burden cost to be \$595.21 per year*. (21.25 burden hours for respondents × \$28.01 mean hourly wage)].

* To estimate the respondents' total information collection burden cost, VA uses the Bureau of Labor Statistics (BLS) mean hourly wage for "All Occupations" of \$28.01. This information is available at https://www.bls.gov/oes/2021/may/oes_nat.htm#00-0000.

Assistance Listing

The Assistance Listing numbers and titles for the program affected by this document are 64.201, National Cemeteries; 64.203, Veterans Cemetery Grants Program; and 64.206, VA Outer Burial Receptacle Allowance Program.

List of Subjects in 38 CFR Part 38

Administrative practice and procedure, Cemeteries, Veterans.

Signing Authority:

Denis McDonough, Secretary of Veterans Affairs, approved this document on February 7, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director,

Office of Regulation Policy & Management,

Office of General Counsel,
Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 38 as set forth below:

**PART 38 — NATIONAL CEMETERIES OF THE DEPARTMENT OF VETERANS
AFFAIRS**

1. The authority citation for part 38 continues to read as follows:

Authority: 38 U.S.C. 107, 501, 512, 531, 2306, 2400, 2402, 2403, 2404, 2407, 2408, 2411, 7105.

2. Amend § 38.619 by adding paragraph (a)(2) to read as follows:

§ 38.619 Requests for interment, committal services or memorial services, and funeral honors.

(a) * * *

(2) *Interment requests pursuant to § 38.620(j).* (i) Consistent with paragraph (a)(1)(i) of this section, interment requests pursuant to § 38.620(j) must include the following:

(A) For decedents who were naturalized under section 2(1) of the Hmong Veterans Naturalization Act of 2000 (the Act), a copy of the official U.S. Certificate of Naturalization. (VA will retrieve naturalization records from the U.S. Citizenship and Immigration Services to verify that the naturalization was pursuant to section 2(1) of the Act.)

(B) For decedents who were otherwise naturalized, a copy of the U.S. Certificate of Naturalization and documentation of the decedent's honorable service with a special guerilla unit or irregular forces operating from a base in Laos in support of the Armed Forces at any time between February 28, 1961, and May 7, 1975.

(C) For decedents who were not naturalized but were lawfully admitted for permanent residence in the U.S., a copy of the official documentation of status as a lawful permanent resident, and documentation of the decedent's honorable service with a special guerilla unit or irregular forces operating from a base in Laos in support of the Armed Forces at any time between February 28, 1961, and May 7, 1975.

(D) Evidence that the decedent resided in the U.S. at the time of death.

(ii) VA will accept the following types of documentation as evidence of service described in paragraphs (a)(2)(i)(B) and (C) of this section:

(A) Original documentation issued by a government agency officially documenting the service type, location and dates served;

(B) An affidavit of the decedent's superior officer attesting to the type of service, location, and dates served;

(C) Two affidavits from other individuals who were also serving with such a special guerilla unit or irregular forces and who personally knew of the decedent's service; or

(D) Other appropriate evidence that factually documents the service, location and dates served.

(iii) The DD Form 214, Certificate of Release or Discharge from Active Duty, is not an appropriate documentation of service for purposes of paragraphs (a)(2)(i)(B) and (C) of this section.

* * * * *

3. Amend § 38.620 by revising paragraph (j) to read as follows:

§ 38.620 Persons eligible for burial.

* * * * *

(j) Any individual who:

(1) Died on or after March 23, 2018; and

(2) Resided in the United States at the time of their death; and

(3) Either:

(i) Was naturalized pursuant to section 2(1) of the Hmong Veterans'

Naturalization Act of 2000 (Pub. L. 106-207, 114 Stat. 316; 8 U.S.C. 1423 note); or

(ii) Served honorably with a special guerilla unit or irregular forces operating from a base in Laos in support of the Armed Forces at any time between February 28, 1961, and May 7, 1975; and was, at the time of the individual's death, a citizen of the United States or an alien lawfully admitted for permanent residence in the United States.

4. Amend § 38.630 by revising paragraphs (a)(1)(ii)(F) and (a)(2)(i)(F) to read as follows:

§ 38.630 Burial headstones and markers; medallions.

(a) * * *

(1) * * *

(ii) * * *

(F) Individuals who were naturalized pursuant to section 2(1) of the Hmong Veterans' Naturalization Act of 2000, or who served honorably with a special guerilla unit or irregular forces operating from a base in Laos in support of the Armed Forces, as described in and subject to § 38.620(j).

(2) * * *

(i) * * *

(F) Individuals who were naturalized pursuant to section 2(1) of the Hmong Veterans' Naturalization Act of 2000, or who served honorably with a special guerilla unit or irregular forces operating from a base in Laos in support of the Armed Forces, as described in and subject to § 38.620(j).

